

OCT 25 1993

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
 WASHINGTON, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In Re:	)	MM Docket 93-94
	)	
Scripps Howard	)	File No. BRCT-910603KX
Broadcasting Company	)	
	)	
For Renewal of License of	)	
Station WMAR-TV,	)	
Baltimore, Maryland	)	
	)	
and	)	
	)	
Four Jacks	)	File No. BPCT-910903KE
Broadcasting, Inc.	)	
	)	
For a Construction Permit for	)	
a New Television Facility on	)	
Channel 2 at Baltimore, Maryland	)	

To: The Honorable Richard L. Sippel  
 Presiding Administrative Law Judge

**MOTION FOR PRETRIAL RULING**  
**THAT "TODAY" QUALIFIES AS NEWS PROGRAMMING**

Scripps Howard Broadcasting Company ("Scripps Howard"), licensee of Station WMAR-TV, Baltimore, Maryland and applicant for renewal in the above referenced proceeding, hereby moves for a pretrial order that NBC's "Today" show qualifies as news programming that would be probative of renewal expectancy. At the October 6, 1993 Admissions Session, Four Jacks Broadcasting, Inc. declined to stipulate to this conclusion. By Order of October 7, 1993, the Presiding Administrative Law Judge invited this Motion to resolve the issue.

1. The Commission has held repeatedly that NBC's "Today" show is a news program. In 1960, the Commission found that "Today" was a bona fide news program, not subject to equal opportunities for interviews of political candidates under 47 U.S.C. § 315(a).

Lar Daly, 40 F.C.C. 314 (1960). More recently, the Commission reiterated that view. See Primer on Political Broadcasting and Cablecasting, 69 F.C.C.2d 2202, 2247 (1978). The Commission also concluded that "Today" was news for purposes of the Personal Attack Rule. Roger Langley, 45 Rad. Reg. 2d (P & F) 1679 (1979) (commentary by Jane Pauley unrelated to any other news story or interview in the same day's program). The validity of these rulings is supported by subsequent Commission rulings on other news programs, by the Commission's broad definitions of "news" when licensees were required to categorize their programming in program logs, and by the lack of a viable alternative to using a broad "news" definition.

2. This reasoning is demonstrated by a long line of cases granting broadcasters wide discretion in defining "news." See, e.g., American Broadcasting Cos., 46 Rad. Reg. 2d (P & F) 1205 (1980) ("Good Morning America" is a "news program"); Fox Television Stations, Inc., 6 F.C.C. Rcd 7120 (M.M. Bur. 1991) ("Not Just News," in which children question "prominent individuals" and participate in a "Match Wits" segment, is a bona fide newscast); Paramount Communications, Inc., 5 F.C.C. Rcd 4627 (M.M. Bur. 1990) ("Hard Copy" is bona fide newscast); Paramount Pictures Corp., 3 F.C.C. Rcd 245 (M.M. Bur. 1988) ("Entertainment Tonight," "Entertainment This Week" are bona fide newscasts); CBS, Inc., 2 F.C.C. Rcd 4377, 4377 (M.M. Bur. 1987) (news interview segments of CBS' "The Morning Program" are exempt despite "numerous interviews and other features presented on the program [that] may be of an

entertainment nature with little or no news value")<sup>1</sup>; CBS, Inc., 55 Rad. Reg. 2d (P & F) 864 (M.M. Bur. 1984) ("American Parade," featuring current news, interviews or profiles, 'On The Road' report and commentary by guest reporter is news interview program); Rev. Donald L. Lanier, 37 F.C.C.2d 952 (Broadcast Bur. 1972) ("The Church Today" is a bona fide newscast). In each of these cases, the broadcaster sought a ruling on whether a particular program or portion of program was news. In each instance, the FCC granted the ruling sought by the broadcaster. When the FCC has found a program to be a more limited "news interview" program, it was generally because the broadcaster asked for such a finding rather than a broader finding that the entire program was a "newscast." See, e.g., note 1 supra. Given a request to judge an entire program, the FCC has liberally interpreted the meaning of "newscast."

3. Consistent with this policy, the Commission has rejected the argument that individual segments of a program may be judged independently. See, e.g., Fox Television Stations, Inc., 6 F.C.C. Rcd at 7120 ("The Commission has thus specifically declined to evaluate the relative quality or significance of the topics and stories selected for newscast coverage . . . ."); Citizens for

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<sup>1</sup> Although limiting its decision to interviews, the Mass Media Bureau did not suggest that other segments of the CBS morning show were unworthy of the appellation "news": "We note here that CBS has requested only that the news interview segments . . . be declared exempt . . . . Therefore, we make no findings herein with respect to any other segment of the program." CBS, Inc., 2 F.C.C. Rcd at 4377. As discussed below, Commission regulation and policy has consistently interpreted an entire program to be news despite segments that, standing alone, arguably might not qualify as "news."

Reagan, 58 F.C.C.2d 925, 927 (1976) ("The inclusion of an interview within a newscast, which if broadcast outside the newscast would not be exempt, is within a station's journalistic discretion and, in and of itself, would not preclude the interview from exempt status . . . ."). Concluding that "Entertainment Tonight" was news, the Commission declared:

Commission determinations as to whether particular kinds of news are more or less bona fide would involve an unwarranted intrusiveness into program content and would be thus, at least suspect under the First Amendment. . . .

. . . Our approach seeks to avoid any assessment of the relative merit of the subjects reported on by ET and ETW, and, instead, seeks to determine if these programs report about some area of current events, in a manner similar to more traditional newscasts.

Paramount Pictures Corp., 3 F.C.C. Rcd at 245-46.

4. There is no reason to conclude that "news" is a more limited category when judging renewal expectancy.<sup>2</sup> When the Commission formally defined "news" for program log categorization, its definition was broad. See 47 C.F.R. § 73.1810 (d)(1)(iii) (1983). Construing this definition in renewal proceedings, the Commission concluded:

The Commission is not the national arbiter of news quality, and we will not become embroiled in questions of this type.

. . . Journalists -- as well as the Commission -- have refrained from defining just what constitutes news. . . . The Commission defines a news program as one that includes reports dealing with current local,

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<sup>2</sup> More likely, the definition of "news" is less inclusive in the context of equal opportunities than it is for other purposes. See, e.g., S. Rep. No. 562, 86th Cong., 1st Sess. (1956), reprinted in 1956 U.S.C.C.A.N. 2564, 2574 (noting that Commission will determine on facts of case which newscasts qualify for exemption).

national and international events, including weather and stock market reports, and commentary, analysis, or sports news when it is an integral part of a news program. We believe this logging definition is broad enough to include news of the entertainment world -- including interviews with artists, reviews of artistic endeavors, reports of upcoming events, and even surveys of the most popular songs in a particular area -- so long as those reports are an integral part of a regular news program.

Service Broadcasting Corp., 46 Rad. Reg. 2d (P & F) 413, 420 (1979).

5. There is no reason to discriminate against "Today" because it is a network, rather than local news program. The Commission has invariably instructed:

While some problems and needs may best be met by local programming, other problems may more appropriately be covered with non-local program sources. It is not our intention to favor a particular program source or format, so long as the licensee's programming does, in fact, help to meet community problems and needs.

Renewal of Broadcast Licenses, 44 F.C.C.2d 405, 422 (1973); accord Deregulation of Commercial Television, 98 F.C.C.2d 1076, 1085 n.28 (1984) ("as the Commission has noted in other contexts, the coverage of local issues does not necessarily have to come from locally produced programming"), rev'd and remanded in part on other grounds, aff'd in part sub nom. Action for Children's Television, Inc. v. FCC, 821 F.2d 741 (D.C. Cir. 1987); Newhouse Broadcasting Corp., 59 F.C.C.2d 218, 224 (1976), recon. denied, 61 F.C.C.2d 718 (1976); WHEC, Inc., 52 F.C.C.2d 1079, 1085 (1975); Pillar of Fire, 99 F.C.C.2d 1256, 1264 (Rev. Bd. 1984), review denied, 7 F.C.C. Rcd 519 (1987).

6. Thus, the "Today" show, which is produced by the NBC network's news department; which consists of news, sports, and

weather -- including segments for local news and weather; and which offers coverage of a broad variety of informational topics is a news program in its entirety. Alternatively, to find that "Today" is not a news program in its entirety would open a Pandora's Box. Future broadcasters and regulators addressing this issue would have to parse each "news" program to make value judgments about newsworthy and non-newsworthy elements and painstakingly divide the time -- a suggestion that the Commission has rejected as unworkable and constitutionally suspect.

WHEREFORE, Scripps Howard Broadcasting Company respectfully moves for a pretrial order designating NBC's "Today" show as news.

SCRIPPS HOWARD  
BROADCASTING COMPANY

By: 

Kenneth C. Howard, Jr.  
Leonard C. Greenebaum  
David N. Roberts  
James E. Hout

Its Attorneys

BAKER & HOSTETLER  
1050 Connecticut Avenue, N.W.  
Suite 1100  
Washington, D.C. 20036  
(202) 861-1500

Date: October 25, 1993

Certificate of Service

I, Ruth Omonijo, a secretary in the law offices of Baker & Hostetler, hereby certify that I have caused copies of the foregoing "Motion for Pretrial Ruling that "Today" Qualifies as News Programming" to be hand-delivered this 25<sup>th</sup> day of October, 1993 to the following:

The Honorable  
Richard L. Sippel  
Presiding Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W.  
Room 218  
Washington, DC 20554

Martin R. Leader, Esq.  
Fisher Wayland Cooper & Leader  
1255 23rd Street, N.W.  
Suite 800  
Washington, DC 20037  
Counsel to Four Jacks  
Broadcasting, Inc.

Norman Goldstein  
Hearing Branch-Mass Media Bureau  
Federal Communications Commission  
2025 M Street, NW  
Room 7212  
Washington, DC 20554

Robert Zauner  
Hearing Branch-Mass Media Bureau  
Federal Communications Commission  
2025 M Street, NW  
Room 7212  
Washington, DC 20554

  
Ruth Omonijo